IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6800 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPIN HIRJI THAKKAR

Versus

BHUJ NAGARPALIKA

Appearance:

MR AR THACKER for Petitioners
MR BP TANNA for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. In this petition under Article 227 of the Constitution of India, in all 22 petitioners have prayed

to quash and set aside the Award dated 31.7.1990 passed by the Presiding Officer, Labour Court, Rajkot in Reference (LCD) No. 22/88 and have further prayed that the respondent Nagarpalika be directed to treat the petitioners as regular workers from 19th July,1986 and to give them all benefits from that day.

2. Reference was made by the Deputy Labour Commissioner, Ahmedabad vide order dated 5.4.1988 and after inquiry, Presiding Officer of the Labour Court, Rajkot in Reference (LCD) No. 22/88 rendered Award dated 31.7.1990 holding that Jyotiben Manharlal Bhatt and Darshak Natvarlal Antani should be treated as regular workers and employee of respondent Nagarpalika with effect from 6.8.1986 and 19.7.86 respectively. The Labour Court further held that except the applicants at Sr. Nos. 8, 20 & 24 of the Reference, rest of the applicants should be treated as regular employees with effect from 10.5.1989. The Labour Court also granted consequential benefits and awarded costs of Rs.300/ (Rs. three hundred only) to the representative union.

3. During the course of submissions, it was pointed out by the Court that plain reading of the award indicates that the award under challenge appears to be invited order by the persons who entered the witness box on behalf of the union. In response to this query, learned counsel Mr. A.R.Thakkar for the petitioners has submitted that the one of the person examined by the member of the union and admission, if any, made by him in his individual capacity, ought not to have been treated as binding to all applicants. Mr. Thakkar has drawn attention of this Court that as per the date of entry in the employment of respondent Nagarpalika, many of the present petitioners should have been made permanent and there was no reason for the Labour Court to give priority to the above-named two workers sparing rest of the workers-applicants. Financial position of the Bhuj Nagarpalika considered by the Labour Court, was not relevant in the facts and circumstances of the case. Even otherwise, the petitioners were to be regularised from the month of May 1989. It is not a matter of dispute that the petitioners were in continuous service of Bhuj Nagarpalika and they had put in service for more than 180 days.

4. Without going into the merits of the matter, following important facts emerge from the plain reading of the impugned award :-

(i) Workers examined before the Labour Court were not deposing facts on behalf of all

the applicants.

(ii) It is not reflected in the order that why the Secretary of the Union of Bhuj Nagarpalika viz. Shri Jethalal.H.Matang who was holding letter of authority is not examined.

(iii) Kalyansing Sursing Sodha who is examined and has made certain admissions before the Labour Court, was not holding any letter of authority to depose on behalf of other workers- applicants before the Labour Court.

5. It has been submitted that merely because some of the workers were discharging duties which were otherwise discharged by a regular employee in the past, they ought not to have been treated on a better footing than other workers. I am told that some of the petitioners are equally qualified who could have been treated as regular employees. Mr. Thakkar has submitted that at present, disputes relating to the workers are entertained by the Presiding Officer of Labour Court at Bhuj and cases pending before the Labour Court, Rajkot are also transferred to Labour Court, Bhuj. Mr. Thakkar, therefore, prayed that Presiding Officer of Labour Court, Bhuj should be directed to deal with reference made by the Deputy Commissioner of Labour, Ahmedabad, afresh by remanding the matter to him for adjudication of the dispute afresh by considering the case of each petitioner.

6. Learned counsel Mr. Nikhil Careal appearing for learned Senior Counsel Mr B.P.Tanna for respondent Nagarpalika has submitted that this is a case where the Labour Court should decide reference afresh.

7. For the reasons aforesaid, the impugned award dated 31.7.1990 passed by the Presiding Officer, Labour Court, Rajkot in Reference (LCD) No. 22/88 is hereby quashed and set aside and matter is remanded back to the Labour Court, Bhuj for adjudicating the dispute raised in the aforesaid reference afresh considering the case of each petitioner, on merits and in accordance with law. It is, however, observed that till the Labour Court, Bhuj records its finding afresh, the benefits granted to two employees namely Jyotiben Bhatt and Darshak Antani vide impugned award, subject to the outcome of the reference, shall remain unaffected, and the Reference Court shall

examine their case individually as they are not party to this petition. Labour Court, Bhuj is directed to decide and dispose of Reference as expeditiously as possible and preferably within six months from the date of receipt of writ. Record, if is lying with the Labour Court, Rajkot, the Labour Court, Rajkot is directed to send the same to Labour Court, Bhuj at the earliest.

Rule is made absolute accordingly. No costs. Yadi to Labour Court, Bhuj as well as Labour Court, Rajkot.

1.9.2000 [C.K. BUCH, J]
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